

**TOWN OF WALPOLE  
BOARD OF HEALTH**

## **TOBACCO CONTROL REGULATION**

### **Statement of Issue: Public Access**

Tobacco use is one of the leading public health problems in America. But the danger is not limited to smokers. According to the Environmental Protection Agency (EPA), environmental tobacco smoke (ETS), which includes both exhaled smoke and the sidestream smoke from a burning cigarette, causes many deaths of non-smoking Americans each year. Environmental tobacco smoke is one of the most widespread and harmful indoor air pollutants.

In 1999, ASHRAE (American Society of Heating, Refrigeration, and Air Conditioning Engineers) decided that there is no level of ventilation that can ensure smoke-free air. Nicotine tests and analyses were conducted in Walpole non-smoking sections of restaurants that allow designated smoking areas and most of these restaurants showed significant airborne concentrations of nicotine in the non-smoking sections. Nicotine is classified as a class A carcinogen and the U.S. Environmental Protection Agency states that any amount of nicotine exposure is unsafe.

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat, and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers, and whereas environmental tobacco smoke, which includes burning tobacco products, causes the death of 53,000 Americans each year; and whereas in 2000, the Public Health Service's National Toxicology Program listed environmental tobacco smoke as a known carcinogen, (U.S. DHHS citing Cal. EPA, 1997) now, therefore, the Board of Health of the Town of Walpole recognizes the right of those who wish to breathe smoke-free air and establishes this regulation under the authority granted to the Walpole Board of Health under Massachusetts General Laws Chapter 111, Section 31 to protect and improve the public health and welfare by prohibiting smoking in public places.

### **Statement of Issue: Youth Access**

Of the Massachusetts children alive today (persons under the age of 20), based on current smoking rates, more than 100,000 will be killed prematurely by tobacco use.

Contrary to popular belief, smoking rates remain high among young people. Smoking among our youth declined only marginally in the 1980's and seems to be increasing in the 1990's. This is in sharp contrast to the decline in most other drug use over the same period. Nationwide, more than 3000 young people start smoking daily; approximately 100 per day in Massachusetts.

The earlier children begin to use tobacco, the more likely they are to become heavy smokers, have a harder time quitting, and die of tobacco related illness. Young smokers underestimate the harmful effects of tobacco use and do not recognize the process that quickly leads them to addiction.

The Walpole Board of Health finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. In recognition of the Surgeon General's conclusion that

nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarettes and other tobacco products.

Accordingly, the Walpole Board of Health is implementing a strict and enforceable system to prevent the illegal sale of cigarettes and other tobacco products to minors.

### **Definitions.**

The following words and phrases, whenever used in this regulation, shall be construed as defined in this section:

- A. **"Bar"** means an adult only establishment, no one under the age of 18 may be admitted, which is devoted to the serving of alcoholic beverages **and** in which the serving of food is only incidental to the consumption of such beverages. Food sale revenue must be less than 20% of the establishment's total revenue per year. A certified statement from a CPA to attest to this fact must be sent to the Board of Health for renewal of variance each year.
- B. **"Bar Area of Restaurant"** means an area of a restaurant in which there is a bar and food is incidental to the consumption of beverages. No one under the age of 18 may be admitted to this area.
- C. **"Board"** means the Board of Health of the Town of Walpole.
- D. **"Controllable Space"** means the area surrounding the entrances and exits to Public Places that a reasonable person would consider to be under the control of the Public Place. It is the intent of this regulation to provide smoke free access to and within Public Places, e.g. the area immediately outside the entrance to a supermarket would reasonably be considered to be under the control of the supermarket and as such would be a non-smoking area.
- E. **"Designated Work Place"** means any place of business employing one or more persons who are required to work on premises in an enclosed area. The designated workplace also includes the controllable space outside the public entrances and exits to the building or enclosed area.
- F. **"Employee"** means any person employed by an employer who performs services for wages or other consideration or any person who volunteers their services for a non -profit entity.
- G. **"Employer"** means any person, partnership, non-profit entity, corporation, trust, or other organized group, including the town of Walpole and any department or agency thereof, who employs the services of one or more individual persons.
- H. **"Enclosed Area"** means all space between a floor and ceiling which is enclosed on all sides by solid walls and windows, or other means which can effectively contain smoking by-products from entering, or leaving this area.
- I. **"Function Hall"** means a facility generally available to the public for hire or loan for the purpose of holding private or public functions.

- J. **"Health Care Facility"** means any office or institution providing individual care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging, or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions including portions of a personal residence used for such purposes.
- K. **"Indoor Sports Arena"** means any sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar recreational facilities where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.
- L. **"Lockout Device"** means an electrical device hard wired to a vending machine. The device must be activated by an employee.
- M. **"Non-smoking Area"** means an area in any of the facilities referenced in these regulations designated and posted by the proprietor or person in charge where smoking by patrons, employees or others is prohibited and where smoke and smoking by-products are not permitted.
- N. **"Persons"** means an individual, partnership, corporation, business, firm, association or group including a city, town, county, or other governmental unit.
- O. **"Private Club"** means a non-profit organization per M.G.L Chapter 180 with a defined membership that is not open to the public.
- P. **"Private Function"** means a function arranged for by persons other than the facility's management where attendance is limited to guests only and no cover fee is charged for attendance.

- Q. **"Public Place"** means any enclosed area open to and used by the general public, or, owned or operated by the Town of Walpole, including but not limited to the following facilities; restaurants, function halls, bars, museums, libraries, hospitals, nursing homes, schools, day care centers, indoor sports arenas, family day care homes, auditoriums, public restrooms, and municipal buildings. Public Place also includes the controllable grounds outside the public entrances and exits to the Public Place.
- R. **"Restaurant"** means any establishment including but not limited to include cafeterias, cafeterias in the designated workplace, night clubs, banquet halls or other function rooms, having one or more seats, serving food for consumption on the premises to include outdoor seating, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. A restaurant is an establishment that derives 20% or more of its total revenues from the sale of food per year.
- S. **"Retail Food Store"** means any establishment commonly known as a supermarket, grocery store, bakery, or convenience store where the primary activity is the sale of food items to the public for off-premises consumption.
- T. **"Retail Store"** means any establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, any goods, wares, merchandise, articles or other things, including supermarkets and grocery stores. "Retail Store" shall not include restaurants as defined herein.
- U. **"Self Service Display"** means displays of tobacco products from which individual packages, multi-packs, or cartons of tobacco products may be selected by the customer.
- V. **"Smoking"** means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or pipe or any tobacco products in any manner or in any form.
- W. **"Tobacco Vending Machine"** means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, bills, swipe cards or slugs.
- X. **"Town"** means the Town of Walpole.

## **Section One: Public Access**

### Section 1001: Smoking Prohibition.

- A. Any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a non- smoking establishment.
- B. Smoking is prohibited in the following areas:
  - 1. Retail Stores, Retail Food Stores, and Shopping Malls.
  - 2. Waiting rooms, hallways, patient rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices including portions of a personal residence used for such purposes.
  - 3. Child Care Facilities including portions of a personal residence used for such purposes.
  - 4. Schools and school property.
  - 5. Elevators, rest rooms, lobbies, hallways, and other common areas in public access buildings.
  - 6. Restaurants, including bar areas of restaurants
  - 7. Bars
  - 8. Function Halls
  - 9. Indoor sports arenas.
  - 10. Private clubs
  - 11. Public places as defined in this regulation.
  - 12. Controllable space surrounding the public entrances and exits to public places.
  - 13. Any area posted as a "Non Smoking" area.

### Section 1002: Implementation.

The proprietor(s) or other person(s) in charge of a public place, shall be responsible for the following

- A. Conspicuous posting of " No Smoking" signs in order to clearly designate which buildings or areas are smoke-free.
- B. Removing smokers from areas where smoking is prohibited

Additionally, no person shall remove a sign posted under authority of Section 1002, A. of this regulation.

### Section 1003: Exceptions

Notwithstanding the provisions of Sections 1001 and 1002 of this regulation, smoking may be permitted in the following places and/or circumstances:

- 1. Private residences, except portions used as a child care office, health care office, or designated workplace
- 2. Hotel and motel rooms rented to guests that are designated as smoking rooms and conspicuously posted as such.

Private or semiprivate rooms of nursing homes and long term care facilities that are separately ventilated and are occupied by one or more patients, all of whom are smokers who have requested in writing to be placed in rooms where smoking is permitted.

Notwithstanding the provisions of Sections 1001 and 1002 of this regulation, smoking may be permitted in the following places and/or circumstances provided a variance has been applied for and received from the BOH:

- 1) Bar area of restaurant as defined in this regulation providing that:
  - a) the bar area shall not include any common area of the premises to which a non-smoker may need access, including but not limited to waiting areas, restrooms, and access route thereto;
  - b) the combination of ventilation systems and structural barriers in the bar area of the restaurant must be sufficient to eliminate any migration of tobacco and tobacco by-products like nicotine from the smoking areas to the non-smoking areas
  - c) the ventilation system must be tested regularly and at the discretion of the Board in a manner to be chosen or approved by the Board and at the expense of the establishment to assure that there is no tobacco by products such as nicotine migrating into the non-smoking areas of the restaurant. This testing must be done quarterly at a minimum but may be required more often at the discretion of the Board and at the expense of the establishment. The results of such testing must be forwarded to the Board of Health within 15 days of testing. The test results will be filed at the Board of Health.
  - d) if such testing indicates that the establishment is not in compliance with these regulations, the restaurant will have 30 days to correct the violations and submit new testing results. If they are not corrected within this time period, on day 31 the bar area of the restaurant must remain non-smoking until violations are corrected and new testing approved by the Board of Health.
  - e) any physical changes to the construction of the building to create a bar area of a restaurant must be approved and in compliance with all other town departments.
  - f) the bar area of a restaurant shall not exceed more than 25% percent of the total seating of the restaurant (variances may be sought)
  - g) no person under 18 years of age can be seated in the bar area of a restaurant
  - h) the owner of establishment must sign a memorandum of understanding regarding these regulations
  - i) the bar area of a restaurant must be marked with signs that warn patrons of the dangers of Environmental Tobacco Smoke. This sign language and position must be approved by the Board of Health
- 2) Private clubs during Private Functions or during club functions not open to non-members or the public.
- 3) Function Halls during Private Functions.

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- 4) Bars upon receipt annually of a letter from a CPA attesting to the fact that the facility derived less than 20% of it's prior year revenues from the sale of food and 80% or more of it's prior year revenues from the sale of alcoholic beverages.

Variances for these facilities can be applied for with the BOH. Variances are good for one year and may be renewed annually unless revoked. Variances may be revoked by the BOH at their discretion if the facility or operator is found by the Board to be in violation of these regulations. Variances may be automatically revoked in the event these regulations or other governing rules or laws are amended or implemented in such a manner that would eliminate smoking in these facilities.

#### Section 1004: Workplaces.

Each employer operating a workplace in the town of Walpole shall establish and implement a written policy governing smoking in such workplace. Each policy must designate adequate no-smoking areas to accommodate the needs of all non-smoking workers. A copy of each policy must be submitted to the Board of Health.

Any employee exposed to smoke or smoking by-products because of poor ventilation or inadequate non-smoking areas may object to the employer. If, after seven (7) days, the employer has not satisfied the objecting employee, a complaint, in writing, may be filed with the Board of Health.

An employee aggrieved by the willful failure or refusal of an employer operating a workplace in the Town of Walpole to establish and implement the policy required under this section, may complain in writing to the employer and file a copy of the complaint with the Board of Health. Such employer shall respond to the complaint in writing within seven (7) days, identifying the steps he or she intends to take to comply with the requirements of the section, and establishing a reasonable time frame for compliance. The employer shall file a copy of the response with the Board of Health for approval.

Section 1005: Non-retaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke-free environment afforded by this regulation.

Section 1006: Other Applicable Laws.

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

**Section Two: Youth Access**

Section 2001: Sale to Minors.

In conformance with Massachusetts General Laws Chapter 270, Section 6, cigarettes, chewing tobacco, snuff or any tobacco in any of its forms shall not be sold to any person under the age of eighteen (18) or, not being his parent or guardian, shall not give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen (18).

No person shall sell cigarettes or other tobacco products to a person under eighteen (18) years of age who has a note from an adult requesting such sale.

Section 2002: Posting State Law.

In conformance with Massachusetts General State Laws, Chapter 270, Section 7, a copy of Massachusetts State Laws Chapter 270, Section 6 shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice to be posted shall be that notice provided by the Massachusetts Department of Public Health.

Such notice shall be at least 48 square inches and shall be posted at the cash register, which receives the greatest volume of cigarette package sales in such a manner so that it may be readily seen by a person standing at or approaching the cash register.

Such notice shall directly face the customer and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. For all other cash registers that sell cigarettes, a notice

shall be attached that is not smaller than 9 square inches, which is the size of the sign provided by the Massachusetts Department of Public Health.

Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of no less than 4 feet or more than 9 feet from the floor.

Section 2003: Identification Required.

No retailer shall sell or permit to be sold cigarettes or other tobacco products to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some other conclusive basis for determining the buyer's age.

Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no such person purchasing the product is younger than 18 years of age. No such verification is required for any person twenty-seven-- (27) years or older.

The establishment's owners and/or managers are responsible for all of his or her employees' training and enforcement of these regulations.

Section 2004: Registration Required.

It is unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid registration from the Town of Walpole for each location in which tobacco products are sold. The term of the registration shall be one year, renewed on January 1, if the applicant complies with the provisions of this chapter. Such registration shall be renewed annually at a cost of \$40.00 (forty dollars)

A tobacco retail registration is non-transferable. A new registration will be issued to a tobacco retailer who changes locations.

Sales of tobacco are not allowed in Restaurants as defined in this regulation.

Section 2005: Vending Machines and Self Service Displays.

Except as otherwise provided in this subsection, a person or entity may only sell tobacco products in direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale which are not permitted include, but are not limited to, vending machines and self service displays. Exceptions: Vending machines and self service displays that are located in facilities where the retail tobacco products dealer permit holder ensures that no person younger than eighteen (18) years of age is present, or permitted to enter at any time.

Section 2006: Out-of-Package Sales Prohibited.

It is unlawful to sell cigarettes out of the manufacturer's package, which complies with required health warnings. Sale of distribution of tobacco products in any form other than an original factory-wrapped package is prohibited.

Section 2007: Distribution of Tobacco Products; Coupons:

No person, firm, corporation, establishment, or agency shall distribute tobacco products free of charge within the town of Walpole. Such methods of free distribution include, but are not limited to, tobacco products "giveaways," or free distribution of tobacco product as an incentive, prize, award, or bonus in a game, contest, or tournament involving skill or chance. Such restriction shall not apply to use of coupons or manufacturers incentives from magazines, newspapers, periodicals, or attached to packaging.

#### Section 2008: Sales by Persons Under Age 18

No person or entity selling tobacco products shall allow anyone under eighteen (18) years of age to sell cigarettes or other tobacco products until such employee reads the Board of Health regulations and state laws regarding the sale of tobacco and signs a sworn statement that (s) he understands and will uphold the regulations. A copy of the sworn statement will be placed on file in the office of the Board of Health.

### **Section Three: Enforcement**

Enforcement of these regulations shall be by the Board of Health members, Board of Health agents and Walpole Police.

#### Section 3001. Penalties.

Any offense may result in the Walpole Board of Health considering revocation of the registration to sell tobacco after a hearing and opportunity to be heard. All penalties shall be applied to the holder of the retail tobacco registration, where such registration exists, or to the person violating any regulation, where a retail tobacco registration is not required.

In addition to other remedies available under any other law, this regulation, any conditions under which a registration issued, or any decision rendered by the Walpole Board of Health may be enforced by and at the discretion of General Laws, Chapter 40, Section 21D, which provides for non-criminal disposition of such offenses.

- A. The penalties to proprietors or other persons in charge of a place covered by this regulation (excepting restaurants and bars) or his or her business agents or designee who fail(s) to comply with sections 1001 - 1003 are:

1.	First Offense	Warning
2.	Second Offense during a three (3) year period	\$100 fine
3.	Third Offense during a three (3) year period	\$300 fine
4.	Subsequent offenses during a three (3) year period	Determined at hearing of Board of Health

- B. The penalties for the following:

1. Any person who smokes in a non-smoking area
2. Tobacco retailers not posting the Massachusetts Department of Public Health warning sign



3. Tobacco Retailers not possessing a valid tobacco registration from the Walpole Health Department
4. The improper placement and/cooperation of a vending machine
5. Out of package sales of tobacco products
6. Use of a free standing display
7. Improper placement of a self-service display
8. Improper distribution of tobacco products / coupons in the Town of Walpole
9. Failure to have minor employees sign an affidavit that they have read and understand the tobacco regulations

Are a fine of fifty (\$50) dollars for each violation or day of noncompliance

and

Suspension of any license issued by the Board of Health for that public place for a period of up to two days for each violation.

- C. The penalties to proprietors or other persons in charge of restaurants and bars covered by this regulation, or his or her business agents or designee who fail(s) to comply with sections 1001 - 1003, not including ventilation testing failure are:

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|----|--|---|
| 1. | First Offense                                      | Warning   |
| 2. | Second Offense during a three (3) year period      | \$100 fine  |
| 3. | Third Offense during a three (3) year period       | \$300 fine  |
| 4. | Subsequent offenses during a three (3) year period | Determined at hearing of Board of Health - may result in disallowance of smoking variance |

Failure to pass the ventilation testing will result in the following:

First failure - establishment has 30 days to comply with regulations and provide new testing results to the Board for approval.

Subsequent failure - variance to allow for smoking will be revoked until further testing which proves the establishment is back in compliance is approved by the Board.

- D. The penalties for violations of sections 1004 - 1005 are:

A fine of \$200 for each violation and for each 7 days of non-compliance thereafter.

- E. The penalties for sales of tobacco products to minors which shall be levied on the storeowner.

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|----|---|---|
| 1. | First Offense                                 | \$200 fine  |
| 2. | Second Offense during a three (3) year period | \$250 fine and suspension of selling cigarettes for three (3) days. |

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|----|--|--|
| 3. | Third Offense during a three (3) year period       | \$250 fine and suspension of selling cigarettes for one (1) week |
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| 4. | Subsequent offenses during a three (3) year period | Determined at hearing of Board of Health                         |

#### Section 3002: Severability

If any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions are declared to be severable.

#### Section 3003: Variances

Variances will not be given for any non-smoking area to become a smoking area.

#### Section 3004: Effective Date

This regulation shall be effective on August 15, 1995

Amended June 11, 1996

Amended October 8, 1996

Amended September 9, 1997

Amended March 15, 2001

Amended June 11, 2002

It is the intent of the Walpole Board of Health to have smoke free bars and restaurants in the Town of Walpole in the future. Any expense that restaurant owners incur to have smoking in the bar areas of their restaurant is the choice of the restaurant owner and their business decision and such decision and expense incurred will not impact any future decisions of the Walpole Board of Health to achieve its ultimate goal.

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